

United States District Court District of Massachusetts

UNITED STATES OF AMERICA,

v.

CRIMINAL NO. 2010-10009-NMG-02

ORLANDO DEJESUS ORTIZ,
Defendant.

ORDER OF DETENTION PENDING TRIAL

COLLINGS, U.S.M.J.

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- _____ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense)(state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- _____ a crime of violence as defined in 18 U.S. C. §3156(a)(4).
 - _____ an offense for which the maximum sentence is life imprisonment or death.
 - _____ an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act, the Controlled Substances Import and Export Act, or the Maritime Drug Enforcement Act.
 - _____ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-©, or comparable state or local offenses.
- _____ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- _____ (3) A period of not more than five years has elapsed since the (date of conviction)(release of the defendant from imprisonment) for the offense described in finding (1).

- ____ (4) Findings Nos (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonable assure the safety of (an)other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternative Findings (A)

- ____ (1) There is probable cause to believe that the defendant has committed an offense.
 ____ for which a maximum term of imprisonment of ten years or more is prescribed in
 the Controlled Substances Act
 ____ under 18 U.S.C. §924©.
- ____ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the safety of the community.

Alternative Findings (B)

- X (1) There is a serious risk that the defendant will not appear.
- X (2) There is a serious risk that the defendant will endanger the safety of another person or the community if released.

Part II - Written Statement of Reasons for Detention

Defendant, age 29, is charged with conspiracy to distribute cocaine base and distribution of cocaine base on May 15, 2009 at Chelsea. The evidence is quite strong. The defendant has a substantial criminal record; in fact, he was on probation on May 15, 2009 on convictions for resisting arrest and assault and battery on a police officer. He has prior convictions for assault and battery (1999), distribution of a Class D substance (1999), assault and battery (2 counts) and assault and battery with a dangerous weapon (5 counts) (2001), possession of Class D substance, possession of Controlled Substances in a school zone (2 counts) and possession of a Class B substance (2005). He smokes marijuana daily and nasally ingests cocaine every Friday and Saturday. Pre-Trial Services has determined that he is not an appropriate candidate for drug treatment. He is likely to be convicted and sentenced to a lengthy period of incarceration. On four occasions on which he was placed on probation, he violated that probation. The Court finds no conditions or combination of conditions of release which will reasonably assure his appearance and the safety of other persons and the community. The facts which form the basis of the Court's conclusion re: dangerousness have been proven by clear and convincing evidence.

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appear. The defendant

shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

/s/ Robert B. Collings

ROBERT B. COLLINGS
United States Magistrate Judge

Dated: March 5, 2010.